

MAINE STATE LEGISLATURE

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Competitive Bidding on Contracts for Public Improvements

There have been numerous problems arise concerning the granting of contracts for public improvements in recent years. Most of these are occasioned by the limitation of \$3,000 set forth in 5 M.R.S.A. § 1743. The increase in the cost of construction is responsible for the various problems.

It is not feasible to set out separate facts and specific questions for answer. To do that would entail much unnecessary time and duplication of work. We believe that a general opinion giving general guide lines will accomplish the end result.

The first sentence of 5 M.R.S.A. § 1743 reads:

"Any contract for any public improvement involving a total cost of more than \$3000, except contracts for professional, architectural and engineering services, shall be awarded by a system of competitive bidding in accordance with chapters 141 to 155 and such other conditions and restrictions as the Governor and Council may from time to time prescribe."

A contract may be written or oral. The statute does not limit contracts to formalized documents signed by both parties.

The \$3000 limitation applies to the cost of the proposed public improvement. A public improvement is defined by 5 M.R.S.A. § 1741 as "the construction, major alteration or repair of buildings or public works now owned or leased or hereafter constructed, acquired or leased by the State of Maine . . . in whole or in part with State funds." The construction of ways, roads or bridges by the State Highway Commission is excepted from the definition.

Next it is necessary to determine the "system(s) of competitive bidding in accordance with chapters 141 to 155." The first method, and the one used on most of the major public improvements

is set forth in § 1745. This consists in advertising for sealed proposals for not less than 2 weeks in newspapers selected by the Governor and Council. The sealed proposals are opened in the presence of a committee of the Executive Council. The award of the resulting contract is approved by the Governor and Council.

The second method is through the competitive bid system utilized by the State Purchasing Agent for services, supplies, material and equipment. This system calls for the transmission of a written or oral proposal or invitation to bid to at least 3 responsible suppliers to be replied to at a stated time. See § 1816.

"Services" are defined in the third paragraph of § 1812, plus the following:

"The State Purchasing Agent may, with the approval of the Commissioner of Finance and Administration, add to or eliminate from the various types of service set forth in this paragraph such services performed by independent contractors as may be deemed by him to be in the best interests of the State."

Hence, any department seeking to use this second method of competitive bidding should be familiar with the services which the State Purchasing Agent has designated by authority of § 1812.

"Supplies, materials and equipment" are not defined in the statutes. The nearest to a definition is that they "shall be held to mean any and all services, articles or things which shall be used by or furnished to the State." Hence, those words are given a very broad and general meaning. They cover almost everything necessary for a state department.

(Either of the two systems of competitive bids may be utilized for public improvements. It should be noted, however, that the latter method is not set up for the purpose of bidding on construction of buildings. Its use should be limited to the purchases of "services, supplies, material and equipment.")

Which system of competitive bidding is to be used in a given situation? A general rule cannot be set down dogmatically. This is an area in which there must be administrative judgments exercised by the department doing the public improvement, the Bureau of Public Improvements and the State Purchasing Agent. In certain types of

buildings or alterations it is advisable to use both methods. For example, a dining facility may be contemplated. Among the necessary equipment could well be dish washing machines, permanent serving tables and certain kitchen equipment. It may be more feasible to purchase such equipment all installed through the State Purchasing Agent than to have a general contractor trying to handle the matter. If bids are requested prior to building, the accepted bid is incorporated into each general contractor's bid.

On occasion there may be repairs to be done that are not susceptible to being done through a general contractor. For example, there may be painting and the installing of linoleum or similar type of flooring. Such repairs could be done by separate contracts under competitive bids through the State Purchasing Agent, provided he has added these types of services to his list of services under § 1812.

The splitting of a project into small components is not illegal provided competitive bidding is used in awarding contracts for each component. To break a project into many small components to avoid competitive bidding would be improper. Such a practice cannot be condoned.

The burden of overseeing public improvements is on the Bureau of Public Improvements. The Bureau must take steps or devise methods to see that all public improvements are properly handled. The Bureau must be vigilant particularly in keeping a watchful eye on the splitting of projects to avoid the requirement of competitive bidding.

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